

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

BAD RIVER BAND OF THE LAKE
SUPERIOR TRIBE OF CHIPPEWA INDIANS
OF THE BAD RIVER RESERVATION

Plaintiff,

v.

ENBRIDGE ENERGY COMPANY, INC., and
ENBRIDGE ENERGY, L.P.

Defendants.

Case No. 3:19-cv-00602

ENBRIDGE ENERGY, L.P.

Counter-Plaintiff,

v.

BAD RIVER BAND OF THE LAKE
SUPERIOR TRIBE OF CHIPPEWA INDIANS
OF THE BAD RIVER RESERVATION and
NAOMI TILLISON, in her official capacity

Counter-Defendants.

Judge William M. Conley
Magistrate Judge Stephen Crocker

ENBRIDGE'S PROPOSED SPECIAL VERDICT FORM

Public Nuisance

QUESTION NO. 1. Is a public nuisance imminent at the Meander on the Bad River Indian Reservation due to the below defendant's negligence?

Enbridge Energy Company, Inc.: _____ (Yes or No)

Enbridge Energy, Limited Partnership ("EELP"): _____ (Yes or No)

QUESTION NO. 2. Is a public nuisance imminent at Slope 18 on the Bad River Indian Reservation due to the below defendant's negligence?

Enbridge Energy Company, Inc.: _____ (Yes or No)

EELP: _____ (Yes or No)

Answer Questions 3-6 if you answered “yes” to Question 1 or 2 for at least one defendant

QUESTION NO. 3. Will the nuisance (identified in Question 1 or 2) immediately occur?

Answer: _____ (Yes or No)

QUESTION NO. 4. Is the imminent nuisance certain to cause significant harm?

Answer: _____ (Yes or No)

QUESTION NO. 5. Will the imminent nuisance result in significant harm to the Band that is different from the harm to be suffered by other members of the public exercising the common right that was the subject of interference?

Answer: _____ (Yes or No)

QUESTION NO. 6. Did the Band unreasonably prevent Enbridge from taking reasonable steps to abate any imminent nuisance you found exists?

Answer: _____ (Yes or No)

Trespass Damages

QUESTION NO. 7. Commencing on what date should the Bad River Band be entitled to receive damages for EELP's trespass on the twelve allotted parcels?

Answer: _____ (Date)

QUESTION NO. 8. What percentage of EELP's profits attributable to the entirety of Line 5 will you award the Band per calendar year (beginning on the date identified in Question 7)?

2013: _____ (%)

2014: _____ (%)

2015: _____ (%)

2016: _____ (%)

2017: _____ (%)

2018: _____ (%)

2019: _____ (%)

2020: _____ (%)

2021: _____ (%)

2022: _____ (%)

Future (to the extent the trespass continues): _____ (%)

QUESTION NO. 9. Should the Band's share of profits awarded above be allocated proportionally based on the Band's ownership interest (as it may have changed over time) in each of the twelve parcels on which EELP is trespassing?

Answer: _____ (Yes or No)

QUESTION NO. 10. What is total amount of money you will award to the Band for EELP's past trespass on the twelve at issue parcels through the date of this verdict form?

2013: _____ (\$)

2014: _____ (\$)

2015: _____ (\$)

2016: _____ (\$)

2017: _____ (\$)

2018: _____ (\$)

2019: _____ (\$)

2020: _____ (\$)

2021: _____ (\$)

2022: _____ (\$)

QUESTION NO. 11. What is total amount of money you will award to the Band for EELP's future trespass on the twelve at issue parcels for each twelve-month period of trespass after the date of this verdict form?

_____ (\$)

Date: _____

Dated: September 21, 2022

Respectfully submitted,

/s/ Justin B. Nemeroff

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Counsel for Defendants

CERTIFICATE OF SERVICE

I certify that on September 21, 2022, I served the foregoing document on all counsel of record using the Court's ECF system.

/s/ Justin B. Nemeroff

Justin B. Nemeroff